

**a PULENTHIRANATHAN A/L
THIAGARAJAH**

v.

**b KERAJAAN NEGERI SELANGOR
(PIHAK BERKUASA NEGERI
SELANGOR DARUL EHSAN) & ANOR.**

HIGH COURT, SHAH ALAM
TUAN AZMEL B HJ MAAMOR JC
[ORIGINATING SUMMONS NO. 21-
107-1992]
9 APRIL 1993

c INDUSTRIAL LAW: Government servant - Promotion approved - Upgrading of salary scale - Emplacement on new salary scale not implemented - Application for declaration that plaintiff entitled to be placed on new salary scale.

d The plaintiff, an employee of the Majlis Perbandaran Kelang, was on the salary scale of B1 with effect from 1 January 1980. The plaintiff was subsequently promoted to a position under which he was entitled to be placed on the salary scale A12. The plaintiff, inspite of the approval of his promotion was not in fact placed on the higher salary scale and he sought a declaration that he was so entitled to be placed on the salary scale A12.

f The defendants' defence was that the salary scale of the plaintiff could not be upgraded to A12 until there was compliance with Article 112 of the Federal Constitution and secondly that the country was experiencing a recession at the material time.

Held:

g [1] From the circumstances of the case there was no legitimate reason why the upgrading could not be implemented. It was not shown at all what steps had been taken by the first defendant to do the necessary to comply with the provisions of Article 112 of the Constitution. More than eight years had passed since the Exco approval and if such approval was really required it would have been obtained from the Federal Government.

i [2] It was a mockery to use recession as a ground of defence because Malaysia and particularly the State of Selangor have since prospered. This ground of defence had been overtaken by events and was no longer valid.
[Plaintiff's application allowed with costs].

Legislation referred to:

Federal Constitution, Article 112
Local Government Act 1976, s. 16

*For the plaintiff - Shahul Hameed Amirudin;
M/s. Albar Zulkifly & Yap*

*For the 1st defendant - Salehuddin b. Saidin,
Penolong Penasihat Undang-Undang Negeri
Selangor*

*For the 2nd defendant - Derek Fernandez;
M/s. Fernandez & Co.*

JUDGMENT**Azmel b. Hj. Maamor JC:**

This is an application by the plaintiff seeking for a declaration that the plaintiff is entitled to be emplaced on the salary scale of A12 from his existing salary scale of B1 with effect from 1 January 1985 together with all emoluments, perquisites and benefits derived thereon.

The plaintiff started his employment with Majlis Perbandaran Kelang (2nd defendant) on 1 July 1964 as Pegawai Mahkamah. On 1 August 1973 he was promoted to Pegawai Mahkamah Tingkatan Khas. And on 1 January 1977 he was again promoted to Pegawai Mahkamah Kanan. In 1979 he held the post of Pembantu Undang-Undang Tingkatan Tertinggi II. When he held the post of Pegawai Mahkamah Tingkatan Khas on 1 January 1977 the plaintiff was emplaced on the salary scale of B4. He was also on salary scale on B4 in 1979 when the Cabinet Committee Report Salary Scheme was enforced.

By virtue of s. 16 of Akta Kerajaan Tempatan 1976 all matters concerning the 2nd defendant relating to salaries, emoluments and perquisites shall be decided by Kerajaan Negeri Selangor through the State Executive Committee (1st defendant).

By a letter dated 26 April 1982, the 1st defendant decided to promote the plaintiff from the salary scale of B4 to salary scale of B1. The promotion was on a personal to holder basis, with effect from 1 January 1980. The contents of the letter is as follows:

Tarikh: 26 April 1982

Yang Dipertua,
Majlis Perbandaran Kelang,
KELANG.

Tuan,

Kenaikan Pangkat Khas Untuk
Penyandang Pegawai Mahkamah Kanan

a Majlis Perbandaran Kelang Daripada Kod Gaji B4 Ke Kod Gaji B1

Adalah saya diarah menarik perhatian tuan mengenai perkara yang tersebut di atas dan memaklumkan kepada tuan bahawa Majlis Mesyuarat Kerajaan Negeri yang diadakan pada 25 Mac 1982 telah meluluskan kenaikan pangkat khas untuk Penyandang Pegawai Mahkamah Kanan daripada Kod Gaji B4 ke Kod Gaji B1 berkuatkuasa mulai daripada 1 Januari 1980.

Sekian, terima kasih.

c “Berkhidmat Untuk Negara”

Saya yang menurut perintah,

(RAZIAH BTE HUSSIN)
Bahagian Kerajaan Tempatan,
b.p. Setiausaha Kerajaan,
SELANGOR.

d From the contents of this letter it is clearly stated that the plaintiff was given a promotion from B4 to B1 with effect from 1 January 1980. Even though it was on a personal to holder basis, it was still a promotion as so stated in the letter. In other words the plaintiff was emplaced on a substantive salary grade of B1 as of 1 January 1980.

e By a circular dated 4 October 1983 the Federal Government through Jabatan Perkhidmatan Awam (JPA) decided to put certain Government Schemes of service into what they called Common Schemes (Skim-skim Perkhidmatan Bersama). The Scheme of Service of Pembantu Undang-Undang was one of the services included in the Common Scheme. The application of this Common Scheme was extended to local authorities through a letter from JPA dated 18 November 1983. The 2nd defendant had adopted this Common Scheme.

g According to the Common Scheme the salary scales for Pembantu Undang-Undang were:

“B9, B3, B1 and A12”.

h In 1984, in the employment of Majlis Perbandaran Kelang there were 2 officers who served under the Service Scheme Pembantu Undang-Undang, one holding the salary grade B11 and the other B1 (personal to holder). By a letter dated 1 December 1984 JPA had allowed the 2nd defendant to emplace the 2 Pembantu Undang-Undang Officers under the Skim Pembantu Undang-Undang (B9,

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B3, B1, A12) which came into force on 1 October 1983.

At its meeting on 10 November 1984 the 2nd defendant's Exco agreed to promote the plaintiff from his B1 (PTH) salary grade to A12. This matter was brought up to the State Exco (1st defendant) by the 2nd defendant by presenting the Senarai Perjawatan Majlis Perbandaran Kelang Tahun 1985 for approval of the 1st defendant. The column on the item, Bahagian Undang-Undang was presented as follows:

Bahagian Undang-Undang	Kod Gaji	Bilangan Jawatan 1985	Kenyataan
1. Pegawai Mahkamah Kanan (Pembantu Undang-Undang-Tkt. Tinggi 1)	B1 (PTH)	1	Cadangan kenaikan gred gaji sekiranya Skim Perkhidmatan Pembantu Undang-Undang boleh digunakan-pakai untuk Pegawai Mahkamah Kanan).
2. Pegawai Pendakwa (Pembantu Undang-Undang-B9)	B11	1	Cadangan kenaikan gred gaji sekiranya Skim Perkhidmatan Pembantu Undang-Undang boleh digunakan-pakai untuk Pegawai Pendakwa

This column states that there are 2 officers involved. One was Pegawai Mahkamah Kanan whose present salary grade was B1 (personal to holder). It was proposed to upgrade him to Pembantu Undang-Undang, Tingkatan Tertinggi 1. The other officer is Pegawai Pendakwa then having a salary grade of B11. It was proposed to upgrade her to the salary grade of B9. It is to be noted that the salary grade of Tingkatan Tertinggi 1 is A12. This is stated in the JPA circular 4 October 1983 (p. 28 of plaintiff's affidavit, in Enclosure I).

At the State Exco meeting of 6 December 1984 the proposal presented by the 2nd defendant was approved by the 1st defendant. This was confirmed by Dato M. Mahalingam who was then a member of the State Exco in his letter dated 21 January 1985, to the Selangor State

a Secretary and copied to the President, Majlis Perbandaran Kelang. I have no reason to doubt the contents of this letter. It was not disputed by the defendants. There does not appear to be any reply by the State Secretary. If the contents of the letter was not true it would have been disputed by the State Secretary.

b In the absence of any reply it is deemed that the State Exco did meet and approve the proposal paper presented by the 2nd defendant on the date in question.

c Despite that approval the plaintiff's salary scale was not upgraded to A12. He had written several letters requesting the 2nd defendant to implement the upgrading of his salary grade from B1 to A12.

From the affidavits filed before the Court the following material facts were established:

- d**
1. Based on the letter dated 20 April 1982, the plaintiff was promoted to salary grade B1 with effect from 1 January 1980. Even though it was on a personal to holder it was intended as a substantive promotion.
 2. The Common Scheme was adopted by the 2nd defendant and in that Common Scheme the Scheme of Service of Pembantu Undang-undang was included.
 3. The 2nd defendant at its meeting on 10 November 1984 had agreed to upgrade the post of the plaintiff from B1 to A12.
 4. The 1 defendant at its Exco meeting on 6 December 1984 had approved the upgrading of the post of the plaintiff as Pembantu Undang-Undang Tingkatan Tinggi I to the salary scale of A12.
 5. The salary grade A12 is within the salary scale of Pembantu Undang-Undang.

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From the date of the approval by the 1st defendant that is, 6 December 1984, there were no subsequent meetings of the State Exco which reversed that Exco decision. Yet no steps were taken by the 1st defendant to upgrade the salary scale of the plaintiff to A12. It is quite clear to me that both the defendants did find the plaintiff eligible to be upgraded to A12. From the legal view point there was nothing to prevent the plaintiff from holding the salary scale of A12. From the wordings of paragraph 12 of JPA circular (p. 29 of the plaintiff's affidavit) it is

manifestly clear that the plaintiff was eligible. He had been emplaced in the salary scale of B1 since 1 January 1980. He had satisfied the 5 years pre-requirement for such upgrading.

What remained to be done by the 1st defendant was the implementation. From the circumstances of this case I am unable to see any legitimate reasons why the upgrading could not be implemented. Yet the upgrading of the salary scale of the officer holding the post of Pegawai Pendakwa from B11 to B9 had been implemented. As such I fail to see why the same could not be done in respect of upgrading of the plaintiff's salary scale.

The 1st defendant stated two reasons why the salary scale of the plaintiff cannot be upgraded to A12. Firstly, it needed to comply with Article 112 of the Federal Constitution and secondly at that time the country was experiencing recession.

Let me deal with the 2nd ground first. If it is true that there was a recession in 1984, it is no longer true now. As a matter of fact it would be a mockery to use this reason as a ground of defence because Malaysia particularly, the State of Selangor, have since prospered. In any case the circular letter referred to by the 1st defendant was dated 6 August 1982. By 1984 the economic situation of the country had already changed for the better. This ground has been overtaken by events and therefore is no longer valid.

As to the first ground, it was not shown at all, before the Court that steps had been taken by the 1st defendant to do the necessary to comply with the provisions of Article 112 of the Constitution since the Exco approval of 6 December 1984. More than 8 years have passed. I am sure if such approval was really required it would have been obtained from the Federal Government. On the other hand such approval was not required when the salary of the Pegawai Pendakwa was upgraded from B11 to B9. Why should a different standard be applied to the plaintiff?

In the circumstances I also find that this 1st ground is not a valid ground. I therefore make this declaration that the plaintiff is entitled to be emplaced on the salary scale of A12 with effect from 1 January 1985 together with all emoluments, perquisites and benefits derived thereon.

a I also order that the costs of this proceedings be borne by the defendants.

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